

REMARKS

This Application has been carefully reviewed in light of the Official Action mailed January 12, 2006. In order to advance prosecution of this Application, Claims 1-3, 6, 7, 11, 12, 16, 17, 19, 21, 26, 27 have been amended. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1-6, 9-18, and 20-30 stand rejected under 35 U.S.C. §102(b) as being anticipated by Fitzgerald. Independent Claims 1, 11, 16, 21, and 25 recite in general an ability to determine pauses in encoded information of a packet flow and adjust fragmentation of packets in the packet flow in response to the encoded information including a pause. By contrast, the Fitzgerald patent makes no mention of any pauses within encoded information carried in a packet flow let alone an ability to detect a pause in the encoded information and adjust fragmentation of packets in the packet flow in response to the encoded information including a pause as required by the claimed invention. The Examiner merely equates a pause to network congestion and does not cite any language in the Fitzgerald patent where encoded information includes a pause as provided in the claimed invention. Support for the above recitation can be found at page 12, lines 24-30, of Applicant's specification. Therefore, Applicant respectfully submits that Claims 1-6, 9-18, and 20-30 are not anticipated by the Fitzgerald patent.

Applicant notes with appreciation the allowability of Claims 7, 8, and 19 if placed into appropriate independent form. Claims 7 and 19 have been amended into independent form as suggested by the Examiner. Therefore, Applicant respectfully submits that Claims 7, 8, and 19 are in condition for allowance.

Claims 22-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fitzgerald in view of Hluchyj, et al. Independent Claim 21, from which Claims 22-25 depend, has been shown above to be patentably distinct from the Fitzgerald patent. Moreover, the Hluchyj, et al. patent does not include any additional disclosure combinable with the Fitzgerald patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claims 22-25 are patentably distinct from the proposed Fitzgerald - Hluchyj, et al. combination.

With the presentation of two new independent claims, an additional filing fee is due. Please charge Deposit Account No. 02-0384 an amount of \$400.00 to satisfy the excess independent claims fee of 37 C.F.R. §1.16(b).

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

The Commissioner is hereby authorized to charge any other fees or credit any overpayments associated with this Application to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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